

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

-
W.P.No.5810 of 2010

ORDER:

The challenge in the present writ petition is to the Award dated 26.11.2009 passed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam in I.D.No.89 of 2007 as published in G.O.Rt.No.1866 Labour, Employment, Training and Factories (LAB.1) dated 31.12.2009.

2. While working as a Driver in the Respondent-Road Transport Corporation, petitioner was served with a charge sheet issued by the Depot Manager, Gokavaram, framing the following charge:

“For having unauthorisedly allowed a known person to drive your Service Bus AP11Z 3207 on 10.9.2006 which constitutes misconduct under Regulation 28(ii) of A.P.S.R.T.C. Employees (Conduct) Regulations, 1963”.

3. Thereafter, the Deputy Superintendent (T), Gokavaram, who was appointed as Enquiry Officer conducted enquiry and submitted a report dated 18.12.2006. Basing on the said report, the Depot Manager, APSRTC, Gokavaram-2nd respondent issued an order 23.1.2007, removing the petitioner from service. After unsuccessfully availing the remedies of Appeal and Review, the petitioner raised an Industrial Dispute vide I.D.No.89 of 2007 on the file of the Industrial Tribunal-cum-Labour Court, Visakhapatnam. The Tribunal vide Award dated 8.10.2009 dismissed I.D.No.89 of 2007. Calling in question, the validity and the legal sustainability of the said Award, confirming the orders of the Primary, Appellate and Reviewing authorities, the present writ petition came to be filed.

4. Heard Sri T.S.Venkataramana, learned counsel for the petitioner and the learned Standing Counsel for APSRTC for the respondents,

apart from perusing the material available before the Court.

5. It is contended by the learned counsel for the petitioner that the Award passed by the Tribunal is erroneous, contrary to law, perverse and opposed to the very spirit and object of the provisions of the Industrial Disputes Act, 1947 (for short 'the Act') and contrary to the material available on record and violative of Article 14 of the Constitution of India. It is further submitted that in the facts and circumstances of the case, the punishment inflicted is unwarranted and the Tribunal did not appreciate the material on record from proper perspective and the charge is highly trivial in nature. In support of his submissions and contentions, the learned counsel places reliance on the following judgments:

- (1) **J.B.Satyanarayana v. Chairman and Managing Director** ^[1]
- (2) **Voltas Ltd. – Allwyn Unit, Hyderabad v. Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad and another** ^[2]
- (3) **Md.Rasheed v. Managing Director, APSRTC, Musheerabad, Hyderabad and others** ^[3]
- (4) **P.V.K.Distillery Limited v. Mahendra Ram** ^[4]

6. Per contra, it is vehemently argued by the learned Standing Counsel for APSRTC that there is neither illegality nor there is any procedural infirmity in the impugned orders, as such, the present writ petition is not maintainable and the petitioner is not entitled for any relief from this Court under Article 226 of the Constitution of India. It is the further submission of the learned Standing Counsel that in view of the categorical statement of the petitioner during the course of preliminary enquiry, petitioner is not entitled for any indulgence of this Court and in view of violation of Regulation 28(ii) of A.P.S.R.T.C.

Employees (Conduct) Regulations, 1963 (for short “1963 Regulations”), there is no dis-proportionality in the punishment. It is further submitted that in view of any absence of any perversity, the case of the petitioner is not amenable for any judicial review under Article 226 of the Constitution of India. The learned Standing Counsel, in support of his submissions and contentions, takes the support of the following judgments.

- (1) **V.Ramana v. APSRTC and others** ^[5]
- (2) **Union of India and others v. P.Gunasekaran** ^[6]

7. The essence of the charge framed against the petitioner is that he allowed another person to drive the Bus unauthorisedly and the same amounts to misconduct under Regulation 28(ii) of the 1963 Regulations. As per the said regulation “driving vehicles of the Corporation without possessing prior licence or without being authorized in writing to do so or allowing any other person to act in this manner constitutes an act of ‘misconduct’. The other regulation which is germane and relevant for this case is Regulation 9 of APSRTC Employees (Classification, Control and Appeal) Regulations, 1967 (for short “1967 Regulations”), which reads as under:

“9. Circumstances under which penalties may be imposed:

Without prejudice to the generality of the provisions of regulation 8, the circumstances under which the penalties specified therein may be imposed, are as follows:

- (1) Dismissal: An employee is liable to be dismissed from service in the following circumstances, namely:-
 - (a) Conviction by a court on a criminal charge; or
 - (b) serious misconduct; or
 - (c) neglect of duty resulting in or likely to result in loss to the Corporation or danger to the lives of its employees or of other persons; or
 - (d) insolvency or habitual indebtedness; or
 - (e) obtaining employment by the concealment of his antecedents which would have prevented his employment in the service of the Corporation had they been made known, before his appointment, to the authority appointing him; or

(i) wilfully concealing the fact of his being or becoming subject to any of the disqualifications mentioned in Section 16 of the Road Transport Corporation Act, 1950.

NOTE(1) : Deleted

NOTE(2) : 'Serious misconduct' includes inter alia the following acts of misconduct:

- (i) Embezzlement
- (ii) Fraud
- (iii) Forgery
- (iv) Cheating in his capacity as an employee
- (v) Taking and offering of bribes
- (vi) Improper behaviour towards women passengers
- (vii) Any other act involving moral turpitude which is punishable under the Indian Penal Code, 1860.
- (viii) Sabotage
- (ix) Being under the influence of drink while on duty.
- (x) Insubordination
- (xi) Misappropriation
- (xii) Theft of Corporation property
- (xiii) Obstructing an employee of other public servant in the discharge of his duties.
- (xiv) Assaulting any person inside the premises or vehicles of the Corporation.
- (xv) Taking part in subversive or political activities or activities prohibited by any law in force or made punishable by any law in force or other activities prejudicial to the interest of the Corporation.
- (xvi) Making malicious of false allegations.
- (xvii) Unauthorised communication of official documents or information.

(2) Removal from Service: An employee shall be liable to be removed from service in the following circumstances, namely:-

- (a) committing an offence for which he is liable to be dismissed under clause (1) above or
- (b) misconduct; or
- (c) inefficiency; or
- (d) repeated commission of minor offences; or
- (e) irregular attendance; or
- (f) absenting himself or overstaying sanctioned leave, without sufficient cause; or
- (g) incivility to members of the public; or
- (h) becoming subject to any of the disqualifications mentioned in Section 16 of the Road Transport Corporation Act, 1950.

(3) Other Penalties:- Any of the other penalties specified in

regulation 8, viz., other than dismissal or removal, may be imposed on an employee in the following circumstances:-

- (a) acts or omissions for which the employee is liable to be dismissed or removed from service, but in respect of which such a penalty is considered excessive in view of the attendant circumstances;
- (b) any minor lapse or delinquency.

Provided that in the case of employees governed by the provisions of the Payment of Wages Act, 1936 (Central Act No.4 of 1936), a penalty of fine or recovery from the pay may not be imposed except in accordance with the provisions contained in that act in this behalf”.

8. It is quite limpid from a reading of the above regulation that the charge framed against the petitioner would not fall under any one of the categories of the serious misconduct as stipulated under Note 2 of the Regulation 9(1) of 1967 Regulations. Regulation 9(3)(a) empowers and authorizes the disciplinary authority to exercise discretion and in other words it imposes an obligation on the disciplinary authority to take into account the attending circumstances also. This legislative intent cannot be lost sight of by the disciplinary authority while discharging the functions under these regulations.

9. The facts and circumstances of the case are required to be analyzed and validity of the questioned orders need to be tested in the light of the language employed in the above regulation and various parameters and principles laid down by the Hon'ble Supreme Court and this Court. From a reading of the order of removal dated 23.1.2007 of the 2nd respondent, it would be amply clear that the Conductor who performed the duty at relevant point of time, in clear and categorical terms, deposed that when the Bus was proceeding from Rajahmundry to Bhadrachalam at 22.00 hours, the Bus reached Kunavaram and the Service Driver and some other passengers got down from the Bus for Tea and subsequently the Bus was started and there were 10 Bhadrachalam passengers and the Conductor further

deposed that the Bus was moving in a Jig-zag way and the he asked the Driver to stop the Bus at a side of the road and he further deposed that due to ill-health, the Driver did not drive the vehicle properly for nearly 20 meters and in the Bus there were ladies and children and at that time, there was no possibility to inform the matter either to Gokavaram Depot authorities or Bhadrachalam Depot authorities. The Conductor further deposed that the passengers in the Bus pressed him and as such the other person known to the Service Driver drove the Bus from Kunavaram to Bhadrachalam. The Conductor further deposed that in the morning at about 4.30 hours, the Service Driver himself drove the vehicle and completed the spell of duty and after that he informed the same to the TTIs. It is interesting and significant to note that no body was examined to dispel the version of the Conductor, who deposed about the ill-health of the petitioner. During the course of hearing, it is reported by the learned counsel for the petitioner that the petitioner attained the age of superannuation.

10. According to the language employed in Regulation 9 of 1967 Regulations, the attending circumstances and prevailing situation at relevant point of time are the indispensable and significant aspects which the disciplinary authority is required and obligated to consider for arriving at the conclusion as to whether the punishment is warranted or not. In the instant case any such exercise by the disciplinary authority is conspicuously absent and in the considered and definite opinion of this Court, the same is fatal to the case of the respondents to sustain the impugned orders. The material available on record further clearly reveals that admittedly the incident which formed the basis for the impugned action took place in the middle of the forest area during night time and the probabilities assigned by the Tribunal which the delinquent should have adopted are far from possibility. The impossibilities which the delinquent is expected to adopt cannot be made the foundation for inflicting the extreme

punishment of removal from the service. The authorities as well as the Tribunal obviously lost sight of the same. The authorities sought to rely on the statement of the petitioner recorded during the course of preliminary enquiry to conclude that the petitioner himself admitted the guilt. If that being so, there is no meaning in holding regular enquiry and recording the statements of the delinquent and the Conductor who deposed as to what happened on the date of incident. In order to disprove the same, no passenger was examined by the management. The attending circumstances, such as, stopping of the Bus during night time in the middle of forest area and the presence of women and children were completely ignored by the authorities as well as Tribunal.

11. In this context, it may be appropriate to refer to the judgments cited by the learned counsel for the petitioner.

(1) In *J.B.Satyanarayana's* case (1 supra), this Court at paragraphs 13, 14, 17, 18 and 19 held as under:

“13. The Parliament was conscious of the fact that in the departmental proceedings, it is quite possible that the charges against the employees are proved and at the same time, every charge cannot entail in the capital punishment of dismissal, particularly when the management has axe to grind against an employee. Obviously for this reason, Section [11-A](#) was incorporated in the Act.

14. We are compelled to observe that in the instant case, the discussion of the Labour Court exhibited more harshness than the disciplinary authority. An order of dismissal, which would shock the conscious of even a common man, in the facts of this case, did not make any difference to the Labour Court and the I.D. was dismissed by undertaking totally irrelevant discussion.

17. If an employee is able to demonstrate that the evidence that formed part of the record before the enquiry officer is insufficient to prove the charges, he can certainly do so. This is a typical case, where such an exercise can be undertaken. We have already extracted the deposition of none other than the witness of the Management itself, in respect of both the charges. His deposition belies, or at least waters down both

the charges. The Labour Courts are constituted with the specific purpose of undertaking such an exercise i.e., to analyze the evidence in the domestic enquiry. Further, even where the charges are taken as proved, Section [11-A](#) of the is an important milestone, which the Labour Court has to cross. Any lapse in that behalf would be fatal to the entire proceedings and would constitute abdication of duty on the part of the Labour Court.

18. In the instant case, the Labour Court did not analyse the evidence on record. It did not bestow its attention to Section [11-A](#) of the Act at all. An error apparent on the face of the record was glaring in the enquiry report itself. We have also demonstrated that though the enquiry officer himself observed that the allegation as to forgery is not proved, he held that charge No. 2 is proved. This only shows either his inexperience or his unbridled loyalty to the Management. Assuming that the charges can be taken as proved, we do not find that the imposition of punishment of dismissal on a senior employee like the appellant was justified. Section [11-A](#) of the Act was introduced to meet the situation of this nature.

19. The mechanism provided for under the Act takes in its fold, not only a social security measure but also the one intended to protect the industrial activity in the Country. The discontinuance of an employee on trivial grounds would result not only in the deprivation of his employment but also denial of services of an experienced employee, to the industry. This is particularly so, when the establishment is a public sector undertaking.”

(2) In *Voltas Ltd–Allwyn Unit’s* case, (2 *supra*), this Court at paragraphs 16 and 17 held as under:

“16. After introduction of Section [11-A](#) of the I.D. Act, a certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The area of discretion is well defined and is not unlimited. The discretion which can be exercised under Section [11-A](#) is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any

such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section [11-A](#) of the I.D. Act and reduce the punishment. While exercising its discretionary jurisdiction under Section [11-A](#) of the I.D. Act, it is No. doubt open to the Tribunal to substitute one punishment by another but the Tribunal exercises limited jurisdiction in this regard. The jurisdiction to interfere with the quantum of punishment could be exercised only when it is found to be grossly disproportionate and on arriving at a finding that No. reasonable person could inflict such a punishment. The Tribunal may furthermore exercise its jurisdiction when relevant facts are not taken into consideration by the management which would have a direct bearing on the quantum of punishment. If the Tribunal decides to interfere with the punishment it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment. The Labour Court and the Industrial Tribunal must act within the four corners and in terms of the provisions of the I.D. Act. Industrial Courts would not sit in appeal over the decision of the employer unless there exists a statutory provision in this regard. The jurisdiction, though wide, must be exercised in terms of the provisions of the statute and No. other. If the punishment is harsh, albeit a lesser punishment may be imposed, but such an order cannot be passed on irrational or extraneous factors and certainly not on compassionate grounds. The discretion under Section [11-A](#) has to be used judiciously. The jurisdiction vested with the Labour Court to interfere with the punishment is not to be exercised capriciously and arbitrarily. The power of the Labour Court, under Section [11-A](#), is not without limitation. There is No. such thing as unlimited jurisdiction vested with any judicial or quasi-judicial forum. An unfettered discretion is a sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No. authority, be it administrative or judicial, has the power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons therefor. The question the Labour Court ought to ask itself, while exercising its discretion under Section [11-A](#), should be whether there are sufficient reasons for it to come to a reasonable conclusion that the punishment imposed is grossly disproportionate. Only in a case where the satisfaction is reached by the Labour Court or the Tribunal, as the case may be, that there are sufficient reasons to do so, would interference with the order of punishment be justified.

17. The Supreme Court in Hombe Gowda Educational Trust's case (5 supra), has observed that the jurisdiction of the Labour Court /Tribunal under Section [11-A](#) of the I.D.Act, to interfere with the quantum of punishment could be exercised only when, *inter alia*, it is found to be grossly disproportionate. Such interference at the hands of the Tribunal should be *inter alia* on arriving at a finding that No. reasonable person could inflict such punishment. The Tribunal may furthermore exercise its jurisdiction when relevant facts are not taken into consideration by the management which would have direct bearing on the question of quantum of punishment."

(3) In *Md.Rasheed's* case (3 supra), this Court at paragraphs 45 to 48 and 52 held as under:

"45. As has been extracted in Coimbatore District Central Cooperative Bank (8 supra), as recently as in 1984, the House of Lords in Council of Civil Service Union v. Minister for Civil Service , has observed as follows:

"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under the heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call illegality, the second irrationality and the third procedural impropriety. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of proportionality ." (emphasis supplied)

46. When the English jurisprudence was tentative in approach to include proportionality as one of the grounds of judicial review in 1984 and only hoped that in course of time the scope of judicial review would be expanded by addition of further grounds, particularly by the possible adoption in the future of the principle of proportionality. On the other hand, the Indian industrial jurisprudence as far back as in 1965 pragmatically acknowledged the potentiality of proportionality as a mitigating factor, and put it on a firm pedestal of judicial approval. In [Hind Construction & Engg. Co. Ltd. V. Workmen](#) , their Lordships of the Honble Supreme Court have observed as follows:

"It is impossible to think that any other reasonable employer would have imposed the extreme punishment of dismissal

on its entire permanent staff in this manner.

The punishment imposed on the workmen was not only severe and out of proportion to the fault, but one which, in our judgment, no reasonable employer would have imposed."

47. Having examined the scope and content of the doctrine of proportionality, the Honble Supreme Court in Coimbatore District Central Cooperative Bank (8 supra), has spelt out the contours of its application. In para-29 of the judgment, it is observed as follows:

"From the above decisions, it is clear that our legal system also has accepted the doctrine of proportionality. The question, however, is whether in the facts and circumstances of the present case, the High Court was justified in invoking and applying the doctrine of proportionality. In our judgment, the answer must be in the negative. Normally, when disciplinary proceedings have been initiated and finding of fact has been recorded in such inquiry, it cannot be interfered with unless such finding is based on no evidence or is perverse, or is such that no reasonable man in the circumstances of the case would have reached such finding. In the present case, four charges had been levelled against the workmen. An inquiry was instituted and findings recorded that all the four charges were proved. The Labour Court considered the grievances of the workmen, negatived all the contentions raised by them, held the inquiry to be in consonance with principles of natural justice and findings supported by evidence. Keeping in view the charges proved, the Labour Court, in our opinion, rightly held that the punishment imposed on workmen could not be said to be harsh so as to interfere with it."

48. The proportionality test, having its origin in Droit Administratif, for many years bypassed English shores but had its echo found in a far distant land. When the English jurisprudence continued its dalliance with Wednesbury, the Indian Courts took recourse to [Article 14](#) and gave the proposition of proportionality constitutional status by interpreting [Article 14](#) expansively. As far back as in 1965, the Honble Supreme Court has accepted the principle of proportionality holding that any punishment which is shockingly disproportionate cannot be sustained. After many decades, in 1985 the House of Lords held that the heads under which judicial review would be exercised would be expanded and one day the proportionality may be one of the heads to be considered. Holding that any adjudication of the principle of proportionality would involve appreciation of facts as if it were a primary authority and that such a primary review would be

impermissible, the English Courts have not travelled far beyond Wednesbury. In any event, with the advent of Human Rights Act, 1998, the House of Lords has adopted a position between proportionality requiring primary review and Wednesbury requiring secondary review. Insofar as the Indian jurisprudence is concerned, beginning with Hind Construction (10 supra) in 1965, later affirming its stand further in another celebrated case i.e., E.Royappa v. State of Tamil Nadu , the Supreme Court has travelled further. Having inevitably been caught between the need to have primary review under the principle of proportionality and restraint required to be maintained under judicial review, confining itself to secondary review, thus not to involve in re- appreciation of the evidence, the Courts have devised a method of applying the concept of the order being shockingly disproportionate to the administrative and quasi-judicial orders affecting the civil and constitutional rights of the citizen nothing but secondary review. Insofar as the facet of discrimination under Article 14 and fundamental freedom under Part-III of the Constitution, the Courts have permitted primary review i.e., the simple instance of proportionality without the intensifier shockingly. Concerning the secondary review, the Honble Supreme Court has reiterated the principle time and again. To cite a few of those pronouncements, it is apposite to refer to the following:

- 1) Union of India v. G.Gangayuthan .
- 2) Indian Oil Corporation v Ashok Kumar Arora .
- 3) U.P.State Road Transport Corporation v. Subash Chandra Sharma .
- 4) Apparel Export Promotion Council v. A.K.Chopra .
- 5) C.M.D.United Commercial Bank v. P.C.Kakkar .
- 6) Regional Manager, U.P.SRTC v. Hoti Lal .
- 7) Dev Singh v. Punjab Tourism Development Corporation .
- 8) Mineral Development Ltd., v State of Bihar .
- 9) Akbar Badruddin v. Collector of Customs.

52. Once the charges are held proved, since they are grave in nature, in the absence of any ameliorating factors, the petitioner can look to neither the tribunal nor this Court to come to his rescue. In fact, it is now well settled that this Court will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with

findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (vide [State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya](#))”

(4) In *P.V.K. Distillery Limited v. Mahendra Ram* (4 supra), the Hon'ble Supreme Court at paragraphs 18 to 24 held as under:

“18. Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the Court realising that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched.

19. In *Haryana Urban Development Authority v. Om Parkash*⁶ it is stated that: (SCC p. 745, para 7)

“7. ... it is now also well settled that despite a wide discretionary power conferred upon the Industrial Courts under Section 11-A of the 1947 Act, the relief of reinstatement with full back wages should not be granted automatically only because it would be lawful to do so. Grant of relief would depend on the fact situation obtaining in each case. It will depend upon several factors, one of which would be as to whether the recruitment was effected in terms of the statutory provisions operating in the field, if any.”

20. In deciding the question, as to whether the employee should be recompensed with full back wages and other benefits until the date of reinstatement, the tribunals and the courts have to be realistic albeit the ordinary rule of full back wages on reinstatement. (*Western India Match Co. Ltd. v. Industrial Tribunal*⁶)

21. In *Hindustan Tin Works (P) Ltd. v. Employees*⁷ this Court has held that: (SCC p. 85, para 9)

“9. ... The relief of reinstatement with continuity of service

can be granted where termination of service is found to be invalid.”

It, therefore, does not lay down a law in absolute terms to the effect that the right to claim back wages must necessarily follow an order declaring that the termination of service is invalid in law.

22. In *Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*⁸ this Court has observed that: (SCC p. 447, para 6)

“6. ... Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief....”

23. In *Allahabad Jal Sansthan v. Daya Shankar Ra*⁹ this Court has observed: (SCC p. 128, para 6)

“6. A law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and/or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration.”

24. In *Madurantakam Coop. Sugar Mills Ltd. v. S. Viswanathan*¹⁰ the quantum of back wages was confined to 50%, stating: (SCC p. 198, para 19)

“19. ... It is an undisputed fact that the workman had since attained the age of superannuation and the question of reinstatement does not arise. Because of the award, the respondent workman will be entitled to his retiral benefits like gratuity, etc. and accepting the statement of the learned Senior Counsel for the appellant Mills that it is undergoing a financial crisis, on the facts of this case we think it appropriate that the

full back wages granted by the Labour Court be reduced to 50% of the back wages.”

12. Coming to the judgments relied on by the learned Standing Counsel for APSRTC.

(1) In *V.Ramana's* case (5 supra), the Hon'ble Supreme Court at paragraphs 11 and 12 held as under:

“11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Wednesbury case*⁴ the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.

12. To put it differently unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/Tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.”

(2) In *Union of India v. P.Gunasekaran* (6 supra), the Hon'ble Supreme Court at paragraphs 12 and 13 held as under:

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of

the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based.
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience.

13. The facts and circumstances make it very much clear that there is patent infirmity in the decision making process on the part of the respondents in view of non-adherence to Regulation 9 of 1967 Regulations. The Tribunal did not properly consider the issue in terms of Regulation 9 of 1967 Regulations and Section 11-A of the I.D. Act.

14. In the facts and circumstances of the case, the judgments cited by the learned Standing Counsel and the principles laid down therein

would not render any assistance to the case of the respondents. On the other hand, this Court finds sufficient force in the submissions of the learned counsel for the petitioner. Therefore, the impugned orders, inflicting punishment of removal from service and the Award passed by the Tribunal cannot be sustained in the eye of law.

15. For the aforesaid reasons, the writ petition is allowed, setting aside the Award dated 26.11.2009 passed by the Industrial Tribunal-cum-Labour Court, Visakhapatnam in I.D.No.89 of 2007 and consequently it is declared that the petitioner is entitled for all the monetary benefits including back wages and all other attendant benefits. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 27.1.2016
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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[\[4\]](#) (2009) 5 SCC 705
[\[5\]](#) (2005) 7 SCC 338
[\[6\]](#) (2015) 2 SCC 610